

1 THIS CAUSE came on to be heard on the 2nd
2 day of November, 2011, before the Honorable G. Richard
3 Johnson, holding the Chancery Court for Washington County
4 at Jonesborough, Tennessee.

5 Present and appearing for the Plaintiff/
6 Petitioner was Mr. Bobby MacBryan Green, pro se, Johnson
7 City, Tennessee.

8 Present and appearing for the Defendants/
9 Respondents was Mr. Howell H. Sherrod, Jr., Attorney,
10 Johnson City, Tennessee.

11

12 The following matters were presented,
13 to-wit:

14

15 THE COURT: 41049?

16 MR. SHERROD: I represent the Southside
17 Neighborhood Organization and the individuals.

18 THE COURT: Come on around, Mr. Green. Good
19 morning.

20 MR. GREEN: Good morning, Sir.

21 THE COURT: You can just have a seat over
22 there.

23 MR. GREEN: Yes, Sir.

24 THE COURT: I don't see your response in
25 here.

1 MR. SHERROD: Sir?

2 THE COURT: I don't see your response.

3 MR. SHERROD: I filed it yesterday, Your
4 Honor, out there.

5 THE COURT: Okay. Would you try to find
6 that for me, Madam Clerk? He filed it yesterday, his
7 response.

8 MR. SHERROD: I've got an extra copy, if you
9 want it. The reason it was filed so late was because I had
10 --- was discussing this with Tom Jessee, who was
11 Mr. Green's attorney, and...

12 THE COURT: Mr. Jessee came by yesterday, I
13 think, and withdrew. Is that your understanding?

14 MR. GREEN: Yes, Sir.

15 MR. SHERROD: He withdrew after I served
16 him. I mean I...

17 CLERK: They're going to bring it to me.

18 MR. SHERROD: I've got a copy, if you all...

19 THE COURT: They're bringing it in. Thank
20 you.

21 MR. SHERROD: Oh, they're bringing it?

22 THE COURT: Just have a seat.

23 MR. SHERROD: Your Honor, I may have
24 misspoke on that. I see that I've been given this file
25 today, the original, but I did not notice that it's not

1 been filed. And Tom Jessee was served yesterday.

2 THE COURT: Sheriff, take it to the clerk.
3 Clerk, stamp file it.

4 CLERK: Yeah. Yeah, we didn't get it.
5 Okay.

6 THE COURT: Stamp file it, please.

7 CLERK: Okay.

8 THE COURT: Your arguments?

9 MR. GREEN: Yes, Sir. Your Honor, may I
10 speak from this table where I can keep track of my
11 materials more easier?

12 THE COURT: Yes, Sir, if you'll just speak
13 loud enough for everybody to hear you.

14 MR. GREEN: Thank you. Yes, Sir. First,
15 Your Honor, I'd like to emphasize to every member of the
16 court that I'm speaking negatively about the Order which
17 has been entered, not about the presiding Judge. It is my
18 firm belief that, you know, the Order should not have been
19 presented to the Judge for signature. I also understand
20 that it's likely that the Court will, today, reaffirm its
21 holding in the Final Decree, but even if that's the case,
22 there is one serious error in the recitals, on page 1 of
23 the Final Decree and it's repeated again on page 2, that
24 deserves our attention. It stated that, "Plaintiff's
25 request for a temporary injunction was properly denied."

1 That is erroneous, Your Honor. To the best of my
2 knowledge, my request for a temporary injunction has never
3 been presented to any Judge. And I also note that Rule 65
4 requires that in granting or denying such a request that
5 findings of fact and conclusions of law be entered into the
6 record. It may be that what the opposing counsel has
7 gotten confused over is that I did have a petition for a
8 restraining order, which was presented to Judge Seeley, and
9 Judge Seeley did deny that, putting a note in the file
10 saying, "No. Denied. Meeting already had. If he is
11 correct after hearing could be set aside/voided," and it's
12 signed "TJS." So I would ask the Court to be aware that
13 does need to be corrected. Then moving on beyond that,
14 there are less serious inaccuracies in the Final Decree,
15 one of them being the statement that the affidavits of the
16 defendants was attached to the Answer. They were attached
17 to the Motion to Dismiss, not to the Answer. I don't think
18 that's of any great significance. And, Your Honor, moving
19 on to the meat of the Motion to Alter or Amend, the Order
20 entitled "Final Decree" incorporates material that was not
21 found in the court file at the time, and as I've pointed
22 out fully in my Motion, the list, which was attached to the
23 Final Decree, bears a file stamp indicating that it was not
24 received into the record until 13 minutes after the Final
25 Decree was entered. The significance of that for me, Your

1 Honor, is that when an Order is signed commanding me to
2 comply with a list and the list is not in the record for
3 the Court to see, it...

4 THE COURT: I might have seen the list at
5 trial. It's just that it wasn't attached to the Final
6 Decree.

7 MR. GREEN: I did not have any way of
8 knowing that, Your Honor. I just have access to what's in
9 the record. Also, I would like to point out that the list
10 that's attached to the decree was faxed in to the file and
11 it wasn't even faxed in in compliance with Tennessee Rules
12 of Civil Procedure 5A regarding fax communications. There
13 was no cover letter, no instructions to the clerk for what
14 to do with the list. It was just a naked list that was
15 faxed in. Also, the Final Decree was before the Court on a
16 Motion to Dismiss. To the best of my knowledge, that's the
17 only Motion that's been filed by the defendants, and a
18 Motion to Dismiss, of course, considers only the Complaint
19 and...

20 THE COURT: It's a test of the Complaint.
21 Yes.

22 MR. GREEN: Yes, Sir. And there are cases
23 that indicate that when a party has placed into the record
24 a Motion for Supplemental Pleadings that the Court, you
25 know, is justified in examining those as well. But in this

1 case, the Final Decree in the recitals indicate that the
2 Court considered the defendants' Answer and affidavits.
3 And according to the Rules of Civil Procedure, Rule 12, as
4 soon as the Court goes beyond the examination of the
5 Complaint, plaintiff, I, immediately acquire the right to
6 proceed with summary judgment, and the Final Decree would
7 prevent me from exercising that right by, you know,
8 disposing the matter altogether. So I would urge the Court
9 to recognize my right to pursue summary judgment and
10 discovery. Also, the Final Decree, which was before the
11 Court, I mean the matter was before the Court on a Motion
12 to Dismiss, awards surprise and immediate injunctive and
13 declaratory relief to the defendants. I have no idea how
14 that came about. I would like to point out to the Court
15 that the 2005 Tennessee Supreme Court case of Jennings v.
16 Piggly Wiggly sets forth a standard that although the
17 appellant is under a responsibility to provide the record
18 to the Court of Appeals, the appellee, especially when it's
19 the prevailing party, is under a serious obligation to
20 ensure an adequate record, and in this case, there was no
21 adequate record, I mean in the Supreme Court case, as in
22 the case of Green v. Jones. There is no indication in the
23 record what the basis for the Final Decree is. In Jennings
24 v. Piggly Wiggly, the Supreme Court reversed the Court of
25 Appeals, vacated the trial court's grant of summary

1 judgment and remanded the case to the trial court for
2 further proceedings. In this matter, there is no way that
3 an appellate court could determine the basis for the Final
4 Decree. Also, with regard to the Motion to Dismiss, the
5 original basis for the Hearing, the 2011 Tennessee Supreme
6 Court case of Webb v. Habitat for Humanity emphasizes that
7 the standard in Tennessee for assessing the sufficiency of
8 the Complaint has not been altered by the federal cases of
9 Twombly and Iqbal and that the Complaint need not
10 demonstrate plausibility, and the strength of the
11 plaintiff's case is not tested on a Motion to Dismiss.
12 Your Honor, I'm not sure that the Court was aware that
13 almost all of plaintiff's filings are sworn, the Complaint,
14 the Motion for Temporary Injunction, the Motion for
15 Supplemental Pleadings. And the reason --- I would like to
16 explain to the Court that the reason that the sworn Motion
17 for Supplemental Pleadings is in there is that this
18 situation has continued to evolve. It began when I
19 received a notice that the defendants were considering what
20 I allege to be an improper procedure to remove me from
21 office, then, of course, as time has gone by, more facts
22 and more actions have been taken, the latest of which is I
23 have received a letter signed by eight individuals on
24 Southside Neighborhood Organization stationery declaring
25 that because of this civil action, I've been expelled from

1 membership. You know, there was no proper procedure for
2 that. Basically, let me try and summarize, Your Honor.
3 Throughout this whole episode, beginning with the first
4 disagreement with the defendants, what I have asked for is
5 one simple thing, due process and a fair hearing. That's
6 what I ask all the way through, and that's what I'm asking
7 the Court for now, is to please grant my Motion to Alter or
8 Amend and remedy it. And, Your Honor, I understand that
9 the Court would need to rule on my Motion to Alter or Amend
10 before I could go forward with my Motion for a supplemental
11 Complaint and for a temporary injunction, so I'll wait for
12 the Court's ruling on that. And at this time, I would ask
13 the Court to recognize that in the file is my Motion to
14 Consider Unopposed based upon nondelivery of a response to
15 me or to Mr. Jessee two business days in advance of the
16 defendants' response.

17 THE COURT: Do you want a continuance
18 because of that?

19 MR. GREEN: No, Sir, I do not, but thank you
20 for asking.

21 THE COURT: Okay. Well, Mr. Green, it's
22 always a pleasure to have you in my court.

23 MR. GREEN: Thank you, Sir.

24 THE COURT: You are a physician and you are
25 the smartest pro se litigant I've ever had in here...

1 MR. GREEN: Thank you, Your Honor. That
2 means a lot.

3 THE COURT: ...that, evidently, found the
4 books and read them. Also, the Court admires the way you
5 conduct yourself, very gentlemanly and very straight
6 forward, and you ought to consider going back to law
7 school.

8 MR. GREEN: I'm too old for that, Your
9 Honor. Thank you, though. I am interested in law, it
10 fascinates me.

11 THE COURT: Yeah, it is fascinating. Now,
12 Mr. Green, when we had this hearing on this document, Final
13 Decree, that you're contesting, you had a lawyer.

14 MR. GREEN: Yes, Sir. Tom Jessee was here
15 on my behalf.

16 THE COURT: And Mr. Jessee attended that
17 hearing.

18 MR. GREEN: Yes, Sir, that's my
19 understanding.

20 THE COURT: And acted on your behalf.

21 MR. GREEN: Mr. Jessee has explicitly
22 assured me that there were no stipulations and no evidence
23 presented.

24 THE COURT: Well, there's --- his testimony
25 is absent to that effect, either through person, deposition

1 or affidavit. So, you know, the --- we have to take that
2 Final Decree for what it says, its words, until we have
3 evidence to the contrary. I appreciate what you've done
4 and I'll let Mr. Sherrod give his arguments now in
5 opposition.

6 MR. SHERROD: Well, of course, the Final
7 Decree states what it says. It says, "After the hearing of
8 the evidence introduced into open court, the argument of
9 counsel and stipulation of the parties are from the entire
10 record (phonetically)," and Mr. Jessee was here and we did
11 agree that this lawsuit is basically a nuisance case filed
12 by somebody who wants to be in a neighborhood club and they
13 don't want him in it. And it's like if you want to be in
14 my mother's bridge club and they don't want you in there,
15 I'm sorry, you can't sue to get in. It doesn't matter
16 that, you know, they've taken part or done something...

17 THE COURT: It's a voluntary organization,
18 it's non-government.

19 MR. SHERROD: And so --- and the decision
20 was --- and Mr. Green does, I guess, project himself as a
21 reasonable person, but his actions in the neighborhood
22 organization were found to be detrimental. There was a
23 motion made asking him to resign. It was 16 to zero in
24 favor of asking him to resign as President and he decided
25 not to do it. The executive committee met according to the

1 bylaws and removed him, gave him notice that he was
2 removed. He continued to act like he was the President, he
3 continued to post things on the Internet; hence, came this
4 lawsuit that he filed. And, of course, I was an original
5 defendant. I don't even know why I was ever in it because
6 I was --- I'm just a member of the Southside Neighborhood
7 Organization. The other three people are...

8 THE COURT: I didn't know you belonged to
9 anything that was organized.

10 MR. SHERROD: Well, I do. But, anyway, I
11 got out, and the deal was when I got out that I wouldn't
12 sue him for malicious prosecution, I said, just so I could
13 represent the rest of them. So we had a hearing. You
14 know, he's --- the 30th, on the 30th day, he filed his
15 Motion to add some more information and for a rehearing.
16 His position of what Judge Seeley did is --- I don't know
17 how he can come to the conclusion he came to. He came down
18 here ex parte, present --- Your Honor was sick at that
19 time. You were having your eye surgery. And he presented
20 to Judge Seeley, which I have no problem with that. Judge
21 Seeley said no and so he was --- that was not allowed.
22 We've been down here two...

23 THE COURT: Or was it Judge Stanley?

24 MR. SHERROD: And we've been down here on
25 two occasions with more than 30 members and he didn't even

1 show up. That would be Mr. Green didn't show up. And
2 it's, basically, he wants to be in a club that he's not
3 welcome. And I don't think there's any legal basis for a
4 person wanting to be in a private club of neighbors that
5 don't want you in it, and so he's been removed.

6 MR. GREEN: Your Honor, I object to the
7 nature of this. He's getting into factual matters that
8 aren't in the record whatsoever, not by affidavit or any
9 other way. I would ask the Court to disregard these
10 statements. They have no foundation in the record.

11 MR. SHERROD: I've got about a dozen
12 witnesses...

13 THE COURT: I thought there...

14 MR. SHERROD: ...here today. We couldn't
15 get all 30 of them on such short notice, but we can
16 certainly put on proof that that's correct.

17 THE COURT: Well, let's stick to the proof
18 that resulted in the Final Decree because Mr. Green's
19 questioning it.

20 MR. SHERROD: Anyway, Mr. Green's not been
21 to any of the meetings since then. I mean it's a --- it's
22 not that he's banned from being present, he's just not
23 going to be an officer and he's not going to be a member.
24 And it's open to all the people that live in Southside
25 Neighborhood and we don't have a problem with --- we

1 have...

2 MR. GREEN: I continue to object...

3 MR. SHERROD: ...a problem with him
4 trying...

5 MR. GREEN: ...Your Honor.

6 THE COURT: Very well.

7 MR. SHERROD: And we have a problem with him
8 trying to bully his way in, you know, an issue that he's
9 really just not wanted and it doesn't matter why. So that
10 would be our position, and, hopefully, the Final Decree
11 entered stands for what it says, and if he wants to appeal
12 it to the Tennessee Court of Appeals, you know, I can't
13 stop that but I think that's really his next step.

14 THE COURT: It's your Motion so it's your
15 burden so you get to open and close...

16 MR. GREEN: Thank you, Sir.

17 THE COURT: ...if you'd like to.

18 MR. GREEN: Thank you, Sir.

19 THE COURT: Uh-huh.

20 MR. GREEN: I ask the Court, again, to
21 disregard all of Mr. Sherrod's statements that are not
22 relevant to the matter before us today, which is my Motion
23 to Alter or Amend. I have to trust my attorney, Tom
24 Jessee, to tell me the truth about what happened at the
25 hearing and what his actions were. I have no reason to

1 doubt his truthfulness. He told me most explicitly and in
2 no uncertain terms that the matter was a Motion to Dismiss,
3 that there was no evidence, no stipulations. The record
4 indicates that it was before the Court on a Motion to
5 Dismiss. On a Motion to Dismiss, the only thing to be
6 considered are the pleadings filed by the plaintiff. Those
7 pleadings were sworn. There is nothing in the record to
8 support a grant of declaratory relief or injunctive relief
9 to Jodi Jones or any of the defendants. The Final Decree
10 incorporated material which was not in the court file and
11 only entered the court file after the Final Decree was
12 entered. The Final Decree wrongfully precludes proceedings
13 for summary judgment and discovery by the plaintiff. All
14 of those are his by right based upon rule --- Tennessee
15 Rule of Procedure (sic) 12 because the Final Decree in and
16 of itself states that the Court went far beyond
17 consideration of the plaintiff's pleadings and considered
18 affidavits, which in the file and at this time I would like
19 to object to the affidavits filed by the defendants. Those
20 affidavits consists of a legal conclusion without
21 foundation and those affidavits take great pains to avoid
22 the specific individual facts upon which this case needs to
23 be decided. The specific individual facts, as are shown in
24 plaintiff's sworn filed documents, indicate that there has
25 been no proper action taken by Southside Neighborhood

1 Organization in this matter. There has been action taken
2 by the defendants, but they have no authority to take the
3 action which they claim to have taken. So, Your Honor, I
4 humbly urge you to grant my Motion to Alter or Amend
5 through the prayer for relief, the first two, paragraph
6 13a and 13b, the declaratory and injunctive relief granted
7 to the defendants set aside and plaintiff has set forth a
8 valid cause of action. If the Court will do that, then I
9 would like to argue the remaining parts of the prayer for
10 relief. Thank you for listening, Your Honor.

11 THE COURT: Thank you, very much.

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1 **COURT'S OPINION**

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3 THE COURT: In June of 2011, Mr. Bobby Green
4 filed a Complaint, and the gist of the Complaint is that he
5 was the President of the Southside Neighborhood Association
6 in Johnson City and that various other members and officers
7 of the association had meetings and had notices and --- to
8 which Mr. Green objects that he didn't get a notice and the
9 notice was wrong, but, in any event, the purpose was to
10 terminate Mr. Bobby Green as President of the Southside
11 Neighborhood Association. It's a nonprofit association
12 composed of residents of the south side of Johnson City.
13 And just very candidly and very frankly, for whatever
14 reason, the Southside Neighborhood Association did not want
15 Mr. Green as its President and it did not want him as a
16 member. Now that's between Southside and Mr. Green.
17 There's no doubt that a voluntary organization has the
18 right to say who can belong and who cannot belong. So on
19 all --- and the Complaint of Mr. Green was responded to and
20 all the substantial allegations were denied, that,
21 anything, was remiss in removing him. The Answer says that
22 the procedures were followed and that, yes, in fact, they
23 had removed him as President and, yes, in fact, they had
24 removed him as member and that he had caused some
25 disturbances and some problems that the association, either

1 real or perceived, had and found it was in the best
2 interest of the association not to have Mr. Green.

3 Mr. Green was advised that on Tuesday,
4 August 9, 2011, that this Court would have a hearing, and
5 at that time, Mr. Green had a lawyer, Mr. Tom Jessee. So
6 the hearing was set, as I recollect, a couple of times. I
7 was having some eye surgery and some problems. But,
8 anyway, on Tuesday, August 9th, we had the hearing. And
9 the lawyers got together and made stipulations, put it all
10 before the Court, and, primarily, the injunction issue that
11 Mr. Green had prayed for to stop everything in its steps
12 and leave it as it was until we could sort it out, Mr.
13 Green had, evidently, although he didn't advise me in his
14 pleadings, had, evidently, appeared and attempted to get an
15 ex parte TR0 against the defendants who belong to the
16 association. Judge Seeley, my Circuit Court counterpart
17 who acts by interchange, when he's out, I take his place,
18 when I'm out, he takes mine, and he refused that TR0 that
19 was presented by Mr. Green. In any event, we had the
20 hearing. It was a full hearing, it was a complete hearing,
21 it was a fair hearing. Mr. Green didn't come. His lawyer
22 very much participated. And the Final Decree simply says
23 that I've dismissed the Complaint and all supplemental
24 pleadings, that I deny the request for the temporary
25 injunction, that Mr. Green was properly removed as

1 President of the Southside Neighborhood Association, that
2 Mr. Green is directed to return all of the property of the
3 Southside Neighborhood Association to Jodi Jones or her
4 designee and the costs are taxed against Mr. Green. He
5 files, within the 30 day period, a Motion to Alter or
6 Amend. The Motion to Alter or Amend is pursuant to
7 Tennessee Rules of Civil Procedure 5904, very short, "A
8 Motion to Alter or Amend a Judgment shall be filed and
9 served within 30 days after the entry of the Judgment." He
10 has done that. Mr. Green complains about the hearing but
11 he did not attend the hearing. Mr. Green complains about
12 the result of the hearing but he did not attend the
13 hearing. He had a very able, qualified, experienced lawyer
14 that appeared for him and who did, I'm sure, as good a job
15 as he could possibly do. Today, Mr. Green doesn't have any
16 new evidence in support of the Motion. He doesn't cite any
17 change in the law since the Motion. The Court finds that
18 there's been no injustice here that needs to be corrected,
19 that Mr. Green, in spite of his protest, was given a due
20 process hearing, was given a fair hearing with all the
21 notices and all the parties present. The Court, most
22 respectfully, denies the Motion to Alter or Amend. Good to
23 see you again, Mr. Green.

24 MR. GREEN: Yes, Sir.

25 MR. SHERROD: I'll draw the Order, Your

1 Honor.

2 THE COURT: Yes, please.

3 MR. SHERR0D: Thank you.

4 THIS COMPLETES ALL MATTERS IN THE HERETOFORE
5 STYLED CASE.

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1 C E R T I F I C A T E

2 I, Jayne Cox, Licensed Court Reporter
3 and Notary Public, do hereby certify that the foregoing is
4 a true and complete transcript of the Hearing recorded on
5 November 2, 2011 in the case styled BOBBY MACBRYAN GREEN
6 versus JODI JONES, HOWELL SHERROD, BETTY ANN POLAHA AND
7 MARY LEE JONDAHL in the Chancery Court for Washington
8 County at Jonesborough, Tennessee, the same transcribed to
9 the best of my ability and understanding.

10

11 WITNESS my hand and official seal at office
12 at 112 Ovalwood Drive, Gray, TN 37615, this the 8th day of
13 November, 2011.

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NOTARY PUBLIC

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18 My Commission expires: 4/1/13.

19 LCR #129.

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